EXHIBIT 40

Case 1:21-cv-07957-LAK Document 71-55 Filed 05/19/23 Page 2 of 8







No. 31 December 2003

CHRISTMAS CARDS

FROM THE COMIC BOOK CARTOONISTS!

FRED RAY STAN LEE **SHELLY MOLDOFF NICK CARDY CHIC STONE DICK AYERS ALEX TOTH** JACK BURNLEY **GEORGE EVANS JOE SINNOTT** MICHAEL T. GILBERT **JOE MANEELY MARIE SEVERIN KURT SCHAFFENBERGER HARRY LAMPERT MART NODELL** LARRY IVIE JIM JONES **RONN FOSS MARK KAUSLER** CATHY HILL & BILL BLACK



Dick Ayers

Cover Colorists (unknown) Tom Ziuko

And Special Thanks to:

Jack Adams Dick & Lindy Avers Harry & Adele Paul Bach **Bob Bailey** Jeff Bailey Randall J. Barlow Dennis Beaulieu Blake Bell Howard Bender Bill Black Chris Brown Gary Brown Rich Buckler Jack Burnley Sal Buscema Nick Caputo Nick Cardy R. Dewey Cassell John Coates Shel Dorf Al Dellinges Harlan & Susan Ellison Michael T. Feldman Tom Field Shane Foley Brent Frankenhoff Janet Gilbert Marvin Giles Jennifer T. Go . Ron Harris Cathy Hill Richard Howell Tony Isabella Larry Ivie Glen Johnson Marc Kardell

Mark Kausler

Thomas C. Lammers Lampert Mike Leach Dan Makara Nancy Maneely Bob Millikin Cynthia C. Miller Thomas H. Miller Shelly Moldoff Brian K. Morris Mart & Carrie Nodell Dave O'Dell John G. Pierce Virginia Provisiero Charlie Roberts Ethan Roberts Dorothy Schaffenberger Marie Severin Joe Sinnott Robin Snyder Paul Stefanowicz Steve Stiles Marc Swayze Greg Theakston Maggie Thompson Alex Toth Herb Trimpe Dann Thomas Jim Vadeboncoeur, Jr. Mark Voger Dr. Michael J. Vassallo Delmo Walters Hames Ware Bill Warren

Writer/Editorial: Deck the Halls with—Comic Books!?2 A Four-Color Christmas — Mostly in Black-&-White 3 Holiday greetings sent out by comics pros and fans. re: [comments, correspondence, & corrections]......40 Darlin' Dick Ayers & Friends Section Flip Us! About Our Cover: Sometime circa 1941-43, National (DC) Comics mailed out Christmas

Above: Stan Lee got publisher Martin Goodman to spring for sending out season's greetings in the mid-1960s: a letter-size illo of The Thing penciled and inked by Mirthful Marie Severin— "swiping Kirby," she says—but very well indeed! If memory serves, they were mailed out to charter members of Stan's first fan-club brainchild, the Merry Marvel Marching Society... but maybe other fans got them, too. Wonder how many are still kicking around out there? Cards, we mean—not fans! [@2003 Marvel Characters, Inc.]

postcards to-retailers? wholesalers? somebody!-which featured an all-new full-color illus-

tration of Superman as Santa, drawn by master cover delineator Fred Ray, no less. On the

day that collector Charlie Roberts sent Ye Editor a copy of that postcard, the Christmas 2003

issue of Alter Ego was born! (We showed you the actual card in #30's next-issue ad.) But it's

set us to wondering—did DC ever commission any other Golden Age illos for use as holiday

hellos outside the comics themselves? [@2003 DC Comics.]



Alter Ego™ is published monthly by TwoMorrows, 1812 Park Drive, Raleigh, NC 27605, USA. Phone: (919) 833-8092. Roy Thomas, Editor. John Morrow, Publisher. Alter Ego Editorial Offices: Rt. 3, Box 468, St. Matthews, SC 29135, USA. Fax: (803) 826-6501; e-mail: roydann@ntinet.com. Send subscription funds to TwoMorrows, NOT to the editorial offices. Single issues: \$8 (\$10 Canada, \$11.00 elsewhere). Twelve-issue subscriptions: \$60 US, \$120 Canada, \$132 elsewhere. All characters are © their respective companies. All material © their creators unless otherwise noted. All editorial matter © Roy Thomas. Alter Ego is a TM of Roy & Dann Thomas. FCA is a TM of P.C. Hamerlinck. Printed in Canada. FIRST PRINTING.

12

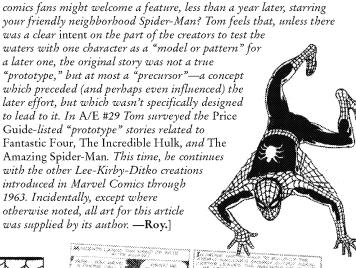
"And Men Shall Call Him... PROTOTYPE!"—Part II

Of Mystics, Mighty Men, and Immortals

A Further Look at the Foreshadowing—or Something—of the Marvel Age of Comics

by Thomas G. Lammers

[EDITOR'S NOTE: The idea of "Marvel Pre-Hero Prototypes" which pre-dated and were used as models or patterns for many of the heroes and villains created in the early 1960s by Stan Lee, Jack Kirby, and Steve Ditko originated in the Overstreet Comic Book Price Guide and has ever since been disputed in various quarters. Two issues ago, with no ill will toward the Price Guide, Tom Lammers began his examination of "prototypes"—which he defines (I'm paraphrasing here) as a concept introduced so a publisher can learn if it is worth developing further, but with a new, improved, and somewhat different character. For instance, is the Lee-Kirby story "I Was a Slave of the Living Hulk!" in Journey into Mystery #62 (Nov. 1960) related in some cause-and-effect way to The Incredible Hulk #1 (May 1962)? Was the saga "The Spider Strikes!" in Journey into Mystery #73 (Oct. 1961), in which an arachnid gained gargantuan size and human intelligence, intended to find out if



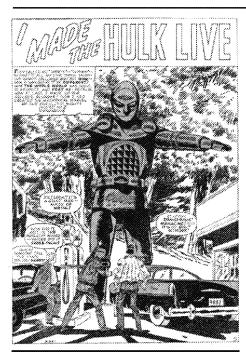






Everybody knows that, in Amazing Fantasy #15 (Aug. 1962), high school student Peter Parker was bitten by a recently-irradiated spider and became Spider-Man, with script by Stan Lee and art by Steve Ditko. But in A/E #29 Tom Lammers shone a spotlight on Journey into Mystery #73's "The Spider Strikes!" nearly a year earlier—wherein an accidentally-irradiated spider became huge and malevolently brainy—in what has been perhaps ironically termed a "reverse prototype."

Two issues back, we printed the splash page from /iM #73; here, flanking art from AF #15, are pp. 2 & 3 of "The Spider Strikes!"—penciled by Jack Kirby and inked by Dick Ayers, with no writer credited—courtesy of alert A/E reader Chris Brown. (Was it Stan Lee and Larry Lieber working in tandem, as in so many monster stories in those "pre-hero"days?) For the first 21 "Spider-Man" stories at eminently affordable prices, pick up a copy of The Essential Spider-Man, Vol. 1. [©2003 Marvel Characters, Inc.]



A prototype of Iron Man—or of The Incredible Hulk? We ran a key panel from this Strange Tales #75 story in Ol' Greenskin's section of this study two issues back, so here's Don Heck's splash page, even though, as Tom Lammers points out, "it doesn't really convey the idea he [Albert Poole] is inside." [©2003 Marvel Characters, Inc.]

Man prototype after the Implosion appears in Tales of Suspense #9 (May 1960), in the Don Heck-drawn story "The Return of the Living Robot!" (5 pp.). The odd thing about this designation is that the story is a sequel to another Heck story, "It Walks by Night" (6 pp.) in the previous issue (March 1960). Why is the sequel in #9 regarded as a prototype but not the original story in #8? A moot point, because the story in #9 does not even qualify as a good precursor. The Living Robot, a member of a "secret order of robots," battles an evil robot. Both are human-

looking in outward appearance, but are gray metal beneath their clothes. Perhaps, then, this is another "reverse prototype" (though the *Price Guide* does not bill it as such). After all, a robot inside a human-like body would seem to be the opposite of a man inside a robot-like metal suit. As with the other reverse prototypes, it is difficult to see how it might be used to gauge potential popularity of a new character.

The theme of a man within powered iron armor resurfaces in *Strange Tales* #75 (June 1960), in the Heck-drawn story "I Made the Hulk Live!" (5 pp.). Scientist **Albert Poole**, like Wilbur Fiske before him, believes his short stature prevents him from enjoying the best life has to offer. To compensate, he creates a robot 15 feet tall that he can live within and control. Because the robot is so large, Poole does not wear the armor like a suit, but rather sits in a chair to pilot it. Unfortunately, he forgets to bring the starter key with him before locking himself

inside, and is trapped inside the immobile machine. This story has a bit more claim to precursor status, but scarcely seems a true prototype, despite being drawn by the same artist who drew Iron Man's debut and origin. Interestingly,



What? Another "Iron Man-Hulk" prototype? According to Tom, the story drawn by Kirby and Ayers for Tales of Suspense #16 doesn't make the grade, even though the guy inside the armor has a life-threatening health issue. A double-and-reverse prototype, rolled into one? Note that, by p. 12, Metallo is referred to as "the invincible Hulk." Were these ideas "in the air" at Martin Goodman's little rump of a company in the late '50s and early '60s, or what? [©2003 Marvel Characters, Inc.]

we once again see the word "hulk" cropping up. In fact, its usage here predates the appearance of Xemnu the Living Hulk in *Journey into Mystery* #62 by six months.

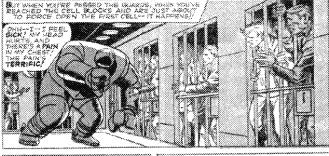
A very similar plot characterizes "The Thing Called Metallo" (13 pp.), the Kirby-and-Ayers cover story for Tales of Suspense #16 (April 1961). Escaped convict Mike Fallon, under an assumed name, volunteers to test Metallo, a larger-than-life suit of robotic armor designed to withstand atomic radiation. Fallon uses the armor for criminal gain, robbing a bank and attempting to release the prisoners at Alcatraz to gain himself an army. Before he can do so, he discovers that he is seriously ill and in need of radiation therapy. Of course, radiation cannot penetrate the armor, so he must exit to be cured. But if he does so, he will be arrested! As with the preceding one, this story seems at most a precursor of the Golden Avenger. The concept of a man within a robotic suit of armor is there, but most of the other elements of the Iron Man mythos are missing. The one exception in this case is the idea that the man inside the suit has a potentially fatal health problem, thus calling to mind Tony Stark's ailing heart. However, it seems to serve in Fallon's case as more of an ironic fate than as a chronic source of pathos.

Dr. Strange

Without much ballyhoo, *Strange Tales* #110 (July 1963) introduces us to an unusual sort of super-hero, a sorcerer of the supernatural, Dr. Stephen Strange. In his subsequent origin story (#115, Dec. 1963), it is revealed that Strange was a brilliant but heartless surgeon who lost the ability to operate due to injuries suffered in an automobile accident. Desperate to cure his neurological damage, he sought out the legendary Ancient One, a mystic in the high Himalayas. Learning of the unseen



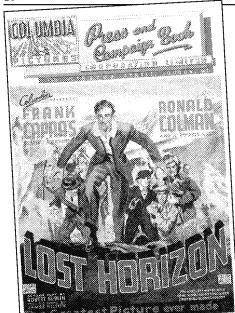








Of Mystics, Mighty Men, and Immortals













prototype. Boris Grumm, an unscrupulous producer of sleazy television shows, plans to base a program on an evil 15th-century sorcerer named Sazzik. In the process, he summons forth the sorcerer, much to his regret.

None of the foregoing seem to have much credibility as deliberate prototypes of Dr. Strange. The main theme of the series starring the Lee-Ditko Master of the Mystic Arts—a selfish man recruited to battle dark forces after a life-changing accident—is completely absent. Victor looks a bit like Stephen—suave, debonair, with a thin mustache—but he is a ghost,

The whole idea of Himalayan lamas in mysterious, idyllic mountain settings goes back at least as far as Shangri-La in James Hilton's 1933 bestseller *The Lost Horizon*, which literary historian Russel B. Nye describes as "a tale of a tired, disillusioned man's discovery of a peaceful Utopia in Tibet"—words that fit Dr. Stephen Strange and the Ancient One (as per this art from *Strange Tales #115*) as well as they do the characters in the novel. We kinda suspect, though, that more comic book writers, artists, and editors saw director Frank Capra's 1937 movie version starring Ronald Colman (with Sam Jaffe as the head lama) than ever read the book! The above cover of the original British pressbook saw print in Ronald V. Borst's wonderful 1992 volume *Graven Images*. Hey, you think maybe Doc Strange got his mustache from Ronald Colman rather than from Mandrake the Magician? [Dr. Strange art ©2003 Marvel Characters, Inc.; pressbook art ©2003 the respective copyright holders.]

supernatural battle between good and evil, he became the Ancient One's disciple, training to take up the struggle.

The Overstreet Guide pegs three stories as Dr. Strange prototypes, plus a fourth as a prototype of the Ancient One; not included is the homonymous but totally unrelated Iron Man villain from Tales of Suspense #41 (May 1963). The earliest of these appears in Strange Tales #79 (Dec. 1960), in the Ditko-drawn story "The Ghost of Grismore Castle!" (6 pp.). Practical joker Otis Norton bets that his pal Victor won't spend the night in a supposedly haunted castle. Otis is confident he will win the bet, as he has booby-trapped the castle with phony spooks. However, once Victor has fled, Otis learns to his regret that the castle really is haunted! In the last panel, we see the vindicated Victor (who does bear a marked resemblance to Stephen Strange) vanishing from sight. He, too, was a ghost!

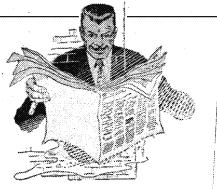
An alleged prototype of Dr. Strange's mentor, the Ancient One, appears in Don Heck's "Somewhere Sits a Lama" (5 pp.) in *Strange Tales* #92 (Jan. 1962). This unnamed lama sits unmoving in a secret room in an Asian monastery, and is the sole bearer of the secret of eternal life... at least, until he can find someone to take his place!

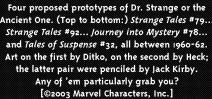
Another alleged market-test for Dr. Strange appears in *Journey into Mystery* #78 (March 1962). In the Jack Kirby cover story "The Sorcerer" (6 pp.), a strange young man named **Aaron** walks out of the Nevada desert and into the life of Lucy Scott and her father. Soon, three other strange characters appear, saying they are sorcerers and have come to return Aaron to their ranks! When Aaron refuses, a battle of magic ensues, which ends in a deadlock. Aaron is allowed to remain, but is stripped of his supernatural powers.

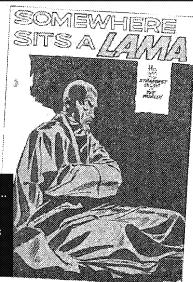
In Tales of Suspense #32 (Aug. 1962), "Sazzik, the Sorcerer" (6 pp.), with art by Jack Kirby and Dick Ayers, is another supposed Dr. Strange



Stephen Strange wasn't Marvel's first Dr. Strange! That honor went to the scientific villain who fought Iron Man in Tales of Suspense #41, only two months before the Mystic Master was destined to appear in Strange Tales. Would you believe that Ye Ed (Roy Thomas) served two or three stints as the scripter of Dr. Strange, often thought about having the two Doc Stranges meet—and never got around to it!? Pencils by Jack Kirby. [©2003 Marvel Characters, Inc.]







Constitution of the Consti

not a sorcerer; this is best considered another of Ditko's "visual templates." Aaron is a sorcerer, but that is his sole resemblance to Dr. Strange; furthermore, he is not a human who learns sorcery from a mentor, but apparently a representative of some breed apart from mankind. In any event, he loses his powers by story's end. Sazzik is likewise a sorcerer of a supernatural nature, not a modern human; in any case, he is evil. Even the lama who supposedly prefigures Strange's teacher is a poor match. His sole power is eternal life, and he serves as an instrument of ironic fate rather than a mentor. Basically, all of these characters have little in common with Dr. Strange save some connection to the supernatural and sorcery. It is even difficult to accept them as legitimate precursors.

Ironically, the one character who might seem to have some claim to being a Dr. Strange prototype is not mentioned as such by the *Price Guide*. The final story in *Amazing Adventures* #1 (June 1961) is "I Am the Fantastic Dr. Droom!" (5 pp.), penciled by Jack Kirby and inked by Steve Ditko. In this story, we meet Dr. Anthony Droom, an American

physician who responds to an appeal from a Tibetan lama for medical attention. After passing several tests that demonstrate his courage and devotion to duty, **Dr. Droom** meets his patient. The aged lama tells Droom that he has used his mystical knowledge to battle sinister occult forces for many years, but that his life is near its end. He requires a successor, a task that Droom accepts. With the lama's disciple in tow, he sets out to battle the dark forces that menace humanity. Additional "Dr. Droom" stories appeared in issues #2 through #4 (art by Kirby and Ayers) and in #6 (art by Paul Reinman). With the title's change to *Amazing Adult Fantasy* with #7 (Dec 1961), with all-Ditko art, the "Droom" feature was discontinued.

Dr. Anthony Droom has much in common with Dr. Stephen Strange. Both are physicians; both receive supernatural powers from an aged lama in the Himalayas; both are engaged in an unseen battle against mystical forces; both are assisted by a dutiful Asian servant. There are differences, of course. Dr. Droom is *always* self-sacrificing, rather than being a reformed cad injured in an accident. Despite the

premise laid out in his origin, Dr. Droom never actually fights supernatural menaces; there is no equivalent of Baron Mordo or Dormammu. Instead, he confronts the same sorts of worldly menaces that filled the pre-hero fantasy titles: a race of fish-men from Atlantis (#2); Zemu, a warrior from Saturn, who plots to invade Earth by posing as a stage magician running for governor (#3); a spaceship full of invading aliens (#4); and Krogg, an alien who shrinks new homes and holds them for ransom in another dimension (#6). In balance, however, it seems clear that Dr. Droom could be considered at the very least a precursor of Dr. Strange, if not an actual prototype.









Dr. Droom, drawn by Kirby and Ditko, debuted in 1961's Amazing Adventures
#1—as a physician who encounters a Tibetan lama and carries on his good
work! The series didn't last long; but, with his name changed to Dr. Druid to
avoid confusion with Doc Doom, most of those stories were reprinted in the
1970s—and a few non-Droom tales were slightly redrawn to turn their heroes
into Druid. Doc Druid even became an Avenger for a, er, spell.

Indeed, in 1990, in Avengers Spotlight #37, Roy & Dann Thomas (with art by Bob Hall & Win Mortimer) had fun spinning a yarn that turned Dr. Druid into an actual prototype of Dr. Strange, at least within the frame of the fictional Marvel Universe! Retroactive continuity lives—and don't let any tin-eared tomfool call it "continuity implants"! (As a footnote: by a, uh, strange coincidence, Golden Age writer Gardner Fox's original name for his 1940 mystic DC super-hero Dr. Fate was—you guessed it—Dr. Droom!)
[©2003 Marvel Characters, Inc.]



Millie the Model takes a fling at being Millie the Marvel in a 1967 issue. Ye Editor recalls this as being the brainstorm of his old Missouri buddy and fellow Marvel staffer Gary Friedrich, who scripted the story. Art by Ogden Whitney. [©2003 Marvel Characters, Inc.]

gang run into a mad scientist named Doctor Doom who has created an evil robot to perpetrate crimes and take over the world. Fittingly, Zelda the Witch comments that "[h]e talks like a comic book villain!"

And finally, I said above that The Thing and Human Torch were the only members of the Fantastic Four represented among the alleged prototypes. But what would you say if I told you that there was a Marvel comic written by Stan Lee, which appeared five months before Fantastic Four #1, which contained an invisible girl named Storm, and who owed her ability to a "blastoff"? Incredible, but true! In an untitled story by Stan Lee and Stan Goldberg in Life with Millie #11 (June 1961), Millie the Model's redheaded rival Chili Storm

fools with a machine invented by a Dr. Blastoff and becomes invisible! She is depicted with the same dashed line technique that Kirby used to draw Sue Storm five months later.

Super-hero Millie?

Speaking of Millie the Model, we can identify one last story that actually does seem to be a prototype, albeit for a super-hero who never materialized. In Modeling with Millie #54 (June 1967) is the 6-page story "Millie the Marvel," scripted by Gary Friedrich and drawn by Ogden Whitney. In the splash panel Millie sits reading a copy of Fantastic Four #63 (June '67) and wondering what it would be like to have super-powers. That night, she dreams she's a super-heroine, Millie the Marvel, with powers of flight and super-strength. In her dream, her



Seems only fitting to close with art by the two Marvel masters who drew the majority of the alleged prototypes. Here are a pair of dynamic "Dr. Droom" panels from 1961's Amazing Adventures #4, penciled by Kirby (with inks by Ayers), repro'd from photostats of the original art—and the very first glimpse the waiting world ever had of Dr. Strange, from 1963's Strange Tales #110, drawn by Steve Ditko. Essential Dr. Strange, Vol. 1, reprints every "Doc-udrama" that appeared before the Sorcerer Supreme first got his own mag in '68. 'Course, a Man named Stan also had something to do with both Droom and Strange—proof positive, if any more be needed, that in tandem Lee, Kirby, and Ditko were, to paraphrase the Bard, "the triple pillar of the world"—or at least, the 1960s Marvel Comics corner of it! [©2003 Marvel Characters, Inc.]

rival Chili Storm appears as a villain with a freeze-ray, using the name The Chill. At the end of the story we find the following appeal: "Do you want to see more of Millie the Marvel, gal? If so, don't be shy—write and tell us what you think!"

Was Marvel seriously considering the conversion of Millie's soap operas into super-hero fare? Clearly, "girl" comics were in trouble. Though romance and teen humor had been Marvel's backbone in 1960, with eight titles, most of these had been dropped by late 1965. Issue #54 was the final one for *Modeling with Millie*, while *Patsy and Hedy* had been dropped the preceding February. Of the girl books, only *Millie the Model*, Marvel's oldest title at the time, was still being published. It would seem that Goodman and Lee were casting about for some way to revitalize comics for girls. The story "Millie the Marvel" certainly appears to have been an attempt to gauge the potential for conversion of their title to a super-heroine. One assumes the response was not overwhelming. Later that year, with #154 (Oct. 1967), *Millie the Model* shifted from serious romance and adventure to light-hearted teen humor and became virtually indistinguishable from competitor Archie's books.

Conclusion

So, do I think these stories should be listed as pre-hero prototypes in the next edition of the Overstreet Comic Book Price Guide? No. Do I believe that any of them (except the late entry "Millie the Marvel") represent an intentional try-out of a proposed new character? Not for a moment. Do I think they're kind of fun? Sure! Do I think they tell us something about the creative process and about the cultural milieu in which comics are created, that ideas and concepts appear again and again? You've got it!

Acknowledgments

I express my sincere appreciation to Randall J. Barlow, Nick Caputo, and Dave O'Dell for providing information on stories not in my collection; and to Dr. Michael J. Vassallo for identifying the artists who drew some of the unsigned stories.

Endnotes

- ¹ Marvel Comics Group and the Silver Age of Comics website (www.angelfire.com/comics/mcg-sac/), accessed 10 March 2003.
- ² Lee, S., Son of Origins of Marvel Comics (Simon and Schuster, New York, 1975), pg. 82.
- ³ Ditko Looked Up website (www.ditko.comics.org/ditko/visual/), accessed 5 March 2003.

